

CRIMINAL COMPLAINT

STATE OF TEXAS §

COUNTY OF NACOGDOCHES §

Date of Complaint: August 17th, 2021

Complainant:

Paul Anderson
c/o Paul Anderson PLLC
601 North Street
Nacogdoches, Texas 75961
936.305.5600
Email: *paul@paulanderson.law*

Date of Incident: May 5th, 2021 - May 19th, 2019

Location: 2306 Douglass Rd, Nacogdoches, TX 75964 and,
101 West Main Street, Suite #230, Nacogdoches, Texas 75961.

Narrative:

Between May 5th, 2021 and May 18th, 2021 an employee of the Nacogdoches County Attorney's office listened to a "jail call" between Attorney Paul Anderson and his incarcerated client, Brandon Finchum.

On May 19th, 2021 Nacogdoches County Attorney John Fleming stated in writing that an employee of the Nacogdoches County Attorney's office intercepted and recorded at least one or more calls between Brandon Finchum, an inmate, and Paul Anderson, his attorney.

A copy of the May 19th, 2021 email from Nacogdoches County Attorney John Fleming to Paul Anderson is hereto attached as Exhibit "A."

Texas Penal Code Violations:

Section 39.06(b) & (c) - Misuse Of Official Information;

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose to which he has access to by means of his office or employment and has not been made public.

The Sheriff of Nacogdoches County did knowingly disclose non-public information to the Nacogdoches District Attorney and to a "non-lawyer employee" of the Nacogdoches County Attorney's Office with intent to harm Paul Anderson.

Further, a person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that: (1) the public servant has access to by means of his office or employment; and (2) has not been made public.

John Fleming and/or a “non-lawyer employee” of the Nacogdoches County Attorney’s Office, with intent to cause harm to Paul Anderson, did unlawfully solicit or receive from a public servant, specifically the Nacogdoches County District Attorney and/or Nacogdoches County Sheriff’s Office, attorney-client privileged information in the form of audio recordings that have not been made public and that a public servant had access to by means of his office.

Section 16.02 -- Unlawful Interception, Use, Or Disclosure of Wire, Oral, or Electronic Communications.

Texas Penal Code §16.02 does not permit any person to record in-person communications when the parties have an expectation that such communication is not subject to interception, for example, if there is a reasonable expectation of privacy or attorney-client privilege.

The Sheriff of Nacogdoches County did knowingly intercept confidential and privileged communication between an inmate and his attorney when it was known the interception was a communication between an attorney and his client. The interception continued for a length of time far in excess of time necessary to determine the communication was between an attorney and his client. The information obtained from the interception was confidential, material, and substantial.

John Fleming and/or a “non-lawyer employee” of the Nacogdoches County Attorney’s Office, with intent to cause harm to Paul Anderson, did unlawfully solicit or receive from a public servant attorney-client privileged material in the form of audio recordings that have not been made public, and that a public servant had access to by means of his office.


Criminal Complaint:

John Fleming and/or one or more non-lawyer employees of the Nacogdoches County Attorney’s Office did knowingly violate Section 39.06(b) & (c) - Misuse Of Official Information and Section 16.02 -- Unlawful Interception, Use, Or Disclosure of Wire, Oral, or Electronic Communications.



AFFIDAVIT

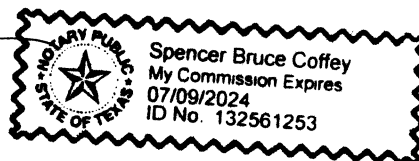
“My name is Paul Anderson. I am over the age of 18 and of sound mind. I swear and affirm the above statements are true and accurate and I have personal knowledge of such and,

Further affiant sayeth not.”


Paul V. Anderson

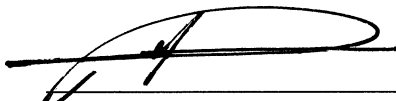
Subscribed and sworn before me, this 17th day of August 2021.

 
Notary State of Texas



**CERTIFICATE OF NOTICE
OF CRIMINAL COMPLAINT**

This Criminal Complaint, filed by Paul Anderson, has been sent by e-service and e-mail to the following persons on August 18th, 2021:


Paul V. Anderson

John Fleming
Nacogdoches County Attorney
101 W. Main Street, Room 230
Nacogdoches, Texas 75961
Via email: jffleming@co.nacogdoches.tx.us

Robert S. Davis
Flowers Davis
Attorney for County of Nacogdoches
1021 ESE Loop 323, Suite 200
Tyler Texas 75701
Via email to: rsd@flowersdavis.com

Lt. Travis Brazil
DPS Texas Rangers, Company "A"
2809 South John Reddit Drive
Lufkin, Texas 75904
Via email to: Brian.Brazil@dps.texas.gov

paul@paulanderson.law

From: John Fleming <jfleming@co.nacogdoches.tx.us>
Sent: Wednesday, May 19, 2021 7:24 PM
To: paul@paulanderson.law
Subject: PIA Request Dated May 5, 2021, Re: Brandon Finchum

Paul:

In connection with responding to your open records request dated May 5, 2021, a non lawyer employee of our office listened to a jail call between you and Mr. Finchum. I do not believe it was listened to with any ill intent. It is my understanding that the employee did not hear anything of substance. It is my understanding the employee heard two statements that I will summarize: that you would meet with your client at 1:30 p.m. and that you would try to call Mr. Finchum's dad. Although the employee was not directed to listen to the call, I take responsibility for what employees of this office do or don't do.

As stated, I take responsibility for anything that happens in this office as I should. Obviously, I did not emphasize to the employee the significance of privileged communications. I have discussed this with the employee and instructed the employee not to disclose to anyone anything heard in the recording. In addition, I have taken steps to avoid this happening again. I believed that you needed to know this had happened.

Thank you.

John Fleming

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John Fleming
Nacogdoches County Attorney
101 W. Main Street, Room 230
Nacogdoches, Texas 75961
Phone 936 560 7789
Facsimile 936 560 7809